

**RULES  
OF  
THE BOARD OF DIETITIAN/NUTRITIONIST EXAMINERS  
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 0470-1  
GENERAL RULES AND REGULATIONS**

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**0470-1-.01 DEFINITIONS.** As used in these rules, the following terms and acronyms shall have the following meanings ascribed to them:

- (1) Accredited Facilities - Facilities accredited by the Joint Commission on Accreditation of Hospitals.
- (2) Advertising - Includes, but is not limited to, business solicitations, with or without limiting qualifications, in a card, sign, or device issued to a person; in a sign or marking in or on any building; or in any newspaper, magazine, directory or other printed matter. Advertising also includes business solicitations communicated by individuals, radio, video, or television broadcasting or any other means designed to secure public attention.
- (3) American Dietetic Association - When the acronym A.D.A. appears in these rules it is intended to mean American Dietetic Association.
- (4) Applicant - Any individual seeking licensure by the board who has submitted an official application and paid the application fee.
- (5) Association - The American Dietetic Association is the national professional association which accredits educational and preprofessional training programs in dietetics.
- (6) Board - The Board of Dietitian/Nutritionist Examiners.
- (7) Board administrative office - The office of the administrator assigned to the board located at 425 Fifth Avenue North, First Floor Cordell Hull Building, Nashville, TN 37247- 1010.
- (8) Board Designee - Any person who has received a written delegation of authority from the board to perform board functions subject to review and ratification by the full board where provided by these rules.
- (9) Certified Facilities, Agencies, or Organizations - Facilities, agencies, or organizations certified by federal agencies.
- (10) Closed Files - An administrative action which renders an incomplete or denied file inactive.

(Rule 0470-1-.01, continued)

- (11) Commission - The Commission on Dietetic Registration of the American Dietetic Association. This agency evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies.
- (12) Dietitian and Nutritionist - A licensed health care professional practicing dietetics/nutrition. "Dietitian" or "nutritionist" may be used interchangeably.
- (13) Department - Tennessee Department of Health.
- (14) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the board receives administrative support.
- (15) Good Moral Character - The quality of being well regarded in personal behavior and professional ethics.
- (16) He/she His/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (17) HRB - When the acronym HRB appears in these rules, HRB represents Health Related Boards.
- (18) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.
- (19) Licensed Dietitian/Nutritionist - Any person who has met the qualifications for licensure and holds a current, unsuspended or unrevoked license which has been lawfully issued by the board.
- (20) Non-medical - As referred to in T.C.A. §63-25-104, means the dissemination of non-therapeutic information relating only to normal nutrition for healthy people.
- (21) Person - Any individual, firm, corporation, partnership, organization, or body politic.
- (22) Practice of Dietetics/Nutrition - The integration and application of scientific principles of food, nutrition, biochemistry, physiology, management and behavioral and social sciences in achieving and maintaining health through the life cycle and in the treatment of disease. Methods of practice include, but are not limited to, nutritional assessment, development, implementation and evaluation of nutrition care plans, nutritional counseling and education, and the development and administration of nutrition care standards and systems.
- (23) Registrant - Any person who has been lawfully issued a license.
- (24) Relative - Parent, spouse, former spouse, siblings, children, cousins, in-laws (present and former), aunts, uncles, grandparents, grandchildren, step-children, employees, or anyone sharing the same household.
- (25) Registered Dietitian (R.D.) - A person who is currently registered by the Commission.
- (26) Supervision - The ongoing, direct review, for the purpose of training or teaching, by an approved supervisor who monitors the performance of an individual. The supervisor provides regular documented face-to-face guidance and instructions with respect to the skills and competencies of the person supervised.

(Rule 0470-1-.01, continued)

- (27) Use of title or description - To hold oneself out to the public as having a particular status by means of stating on, but not limited to signs, mailboxes, address plates, stationery, announcements, business cards, media or other instruments of professional identification.
- (28) Written evidence - Includes, but is not limited to, verification from supervisors or other professional colleagues familiar with the applicant's work.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-103, 63-25-104, and 63-25-107. **Administrative History:** Original rule filed January 29, 1990; effective March 15, 1990. Amendment filed July 19, 1990; effective September 2, 1990. Repeal and new rule filed December 18, 1995; effective March 1, 1996. Amendment filed September 17, 1998; effective December 1, 1998. Amendment filed September 5, 2002; effective November 19, 2002.

#### **0470-1-.02 SCOPE OF PRACTICE.**

- (1) Any person who possesses a valid unsuspended and unrevoked license has the right to use the title dietitian/ nutritionist, licensed dietitian, licensed nutritionist.
- (2) No other person shall assume this title on any work, letter, sign, figure, advertisement, or device to indicate that the person using the same is a licensed dietitian/nutritionist.
- (3) The work performed includes offering dietetic and nutritional advice and services to the public.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-102, 63-25-104, 63-25-105, and 63-25-107. **Administrative History:** Original rule filed October 3, 1989; effective November 17, 1989. Amendment filed July 19, 1990; effective September 2, 1990. Repeal and new rule filed December 18, 1995; effective March 1, 1996.

#### **0470-1-.03 NECESSITY OF LICENSURE.**

- (1) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§ 63-25-101, et seq., to represent himself as a dietitian or a nutritionist or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates, stationery, announcements, telephone listings, calling cards, or other instruments of professional identification or to use such titles as "dietitian/nutritionist", "licensed dietitian", "licensed nutritionist" or such letters as "L.D.N L.D." or "L.N."
- (2) Dietitian/Nutritionist is one of the healing arts and as such the practice of which is restricted to those persons credentialed by the board. Persons engaging in the practice of dietetics/nutrition without being credentialed or expressly exempted by the law are in violation of T.C.A. § 63-1-123.
- (3) Nothing in these rules shall be construed to constrict or limit:
  - (a) The Medical Practice Act, Osteopathy Practice Act, Nursing Practice Act or other licensed health professionals who are currently authorized to practice nutrition in their scope of practice from engaging in the practice of dietetics/nutrition in accordance with their scope of practice of their professions.
  - (b) Students enrolled in an approved academic program in dietetics when such practice constitutes a part of a supervised course of study and such student is designated by a title clearly indicating his student or trainee status.
  - (c) Dietitians serving in the armed forces, U.S. public health service or employees of the Veterans Administration if such practice is related to such service or employment.

(Rule 0470-1-.03, continued)

- (d) Nutrition educators employed by a federal, state, county, or municipal agency or an elementary or secondary school or accredited degree granting educational institution.
- (e) Federal, state, county or local employees involved with nutrition-related programs within the discharge of their official duties.
- (f) Persons employed in a hospital or nursing home and subject to licensure by the Tennessee Board for Licensing Health Care Facilities.
- (g) Persons not holding themselves out to be licensed and/or registered dietitians/nutritionists of the right to provide services and information related to non-medical nutrition if:
  - 1. Employed by or operating a health weight loss or fitness program;
  - 2. Employed by or operating a health food store;
  - 3. Employed by or operating a business that sells health products including dietary supplements, food or food materials or provides non-medical nutritional information or distributes nutritional literature;
  - 4. Conducting classes or disseminating information related to non-medical nutrition.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-123, 63-25-102, 63-25-104, 63-25-105, and 63-25-107.

**Administrative History:** Original rule filed March 26, 1990; effective May 10, 1990. Repeal and new rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.04 QUALIFICATIONS FOR LICENSURE.** Prior to submitting an application each of the following qualifications must be met by a candidate for dietitian/nutritionist licensure:

- (1) Licensed Dietitian/Nutritionist by Examination
  - (a) Completion of a baccalaureate or post-baccalaureate program from a regionally accredited institution with a degree in human nutrition, food and nutrition, dietetics, or food systems management or an equivalent major course of study approved by the board. The education requirement must be completed prior to the date of application.
  - (b) Completion of a planned continuous preprofessional experience in nutrition practice of not less than nine hundred (900) hours under the supervision of a registered dietitian or successful completion of a program of supervised clinical experience as recognized by the Commission on Dietetic Registration of the American Dietetic Association.
  - (c) Submission of evidence of passing the appropriate examination(s) pursuant to rule 0470-1-.08.
  - (d) The applicant shall provide evidence that he is of good moral character (rule 0470-1-.05).
- (2) Licensed Dietitian/Nutritionist by Reciprocity
  - (a) The board may issue a license to any person who, at the time of application, holds a valid license issued by a board of dietitian / nutrition of any state; provided, in the board's opinion, the requirements for the licensure are substantially equivalent to Tennessee's pursuant to Rule 0470-1-.04(1).

(Rule 0470-1-.04, continued)

- (b) The candidate must provide evidence that he is of good moral character.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, 63-25-108, and 63-25-109. **Administrative History:** Original rule filed July 9, 1990; effective August 23, 1990. Repeal and new rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.05 PROCEDURES FOR LICENSURE.** To become licensed as a dietitian/nutritionist in Tennessee, a person must comply with the following procedures and requirements:

- (1) An application packet shall be requested from the board's administrative office.
- (2) An applicant shall respond truthfully and completely to every question or request for information contained in the application form and submit it along with all documentation and fees required by the form and these rules to the board's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.
- (3) Applications will be accepted throughout the year and files which are completed on or before the 30th day prior to a board meeting will ordinarily be processed at the next board meeting scheduled for the purpose of reviewing files. All supporting documents must be received in the board office within 60 days of date of receipt of a notice of deficiency or a request for additional information or the file will be closed and the applicant will have to reapply.
- (4) An applicant shall submit with his application the required application and state regulatory fee pursuant to Rule 0470-1-06.
- (5) An applicant shall submit with his application a signed passport photograph taken within the preceding 12 months. (The photograph must be signed by the applicant on the back.)
- (6) It is the applicant's responsibility to request that a graduate transcript from his degree granting institution, pursuant to T.C.A. § 63-25-108, be submitted directly from the school to the board's administrative office. The institution granting the degree must have been accredited at the time the degree was granted. The transcript must show that the degree has been conferred and carry the official seal of the institution and reference the name under which the applicant has applied for licensure. The educational requirements contained in these rules must be completed prior to the date of application for licensure.
- (7) An applicant shall submit evidence of good moral character. Such evidence shall include at least one recent (within the preceding 12 months) original letter from a professional attesting to the applicant's personal character and professional ethics on the signator's letterhead.
- (8) An applicant shall submit verification of having passed the Commission on Dietetic Registration of the American Dietetic Association's published examination or its successor examination(s) pursuant to rule 0470-1-.08.
- (9) An applicant shall disclose the circumstances surrounding any of the following:
  - (a) Conviction of any criminal law violation of any country, state, or municipality, except minor traffic violations.
  - (b) The denial of certification or licensure application by any other state or the discipline of certification or licensure in any state.

(Rule 0470-1-.05, continued)

- (c) Loss or restriction of certification or licensure.
  - (d) Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under any country's or state's statutory, common, or case law.
- (10) If an applicant holds or has ever held a certificate or license to practice as a dietitian/nutritionist in any other state, the applicant shall cause to be submitted the equivalent of a Tennessee Certificate of Endorsement from each such licensing board which indicates the applicant holds or held an active certificate or license and whether it is in good standing presently or was at the time it became inactive.
  - (11) When necessary, all required documents shall be translated into English and such translation and original document certified as to authenticity by the issuing source. Both versions must be submitted.
  - (12) Personal resumes are not acceptable and will not be reviewed.
  - (13) Application review and licensure decisions shall be governed by rule 0470-1-.07.
  - (14) The burden is on the applicant to prove by a preponderance of the evidence that his course work, supervision, and experience are equivalent to the board's requirements.
  - (15) The initial license fee must be received in the Board's administrative office on or before the 30th day from receipt of notification that the fee is due. Failure to comply will result in the application file being closed.
  - (16) A license will be issued after all requirements, including payment of an initial license fee pursuant to rule 0470-1.06, have been met.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, 63-25-108, 63-25-109, and 63-25-111. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996. Amendment filed September 17, 1998; effective December 1, 1998. Amendment filed September 5, 2002; effective November 19, 2002.

**0470-1-.06 FEES.**

- (1) The fees are as follows:
  - (a) Application fee - A fee to be paid by all applicants. It must be paid each time an application for licensure is filed.
  - (b) Endorsement/Verification - A fee paid whenever a licensee requests the board endorse him to another state or whenever a request is made to verify a license.
  - (c) Late Renewal fee - A nonrefundable fee to be paid when an individual fails to timely renew his license.
  - (d) License fee - A fee to be paid by all applicants who have been approved for licensure prior to the issuance initial of the license. (Not to be confused with any professional association registration fees.)
  - (e) Reinstatement fee - A fee to be paid each time an individual requests to reinstate his license.

(Rule 0470-1-.06, continued)

- (f) Renewal fee - A fee to be paid by all licensees at the expiration of the license. This fee also applies to individuals who reactivate a retired or lapsed license.
  - (g) Replacement License Fee - A fee to be paid when an individual requests a replacement for a lost or destroyed “artistically designed” license.
  - (h) State Regulatory Fee - To be paid by all individuals at the time of application and with each renewal application.
  - (i) Temporary Permit Fee - A fee to be paid when an applicant requests a temporary permit pursuant to T.C.A. § 63-25-109.
- (2) All fees shall be established, reviewed, and changed by the board.
- (3) All fees must be submitted to the board administrative office by certified or personal check or money order. Checks or money orders are to be made payable to the Board of Dietitian/Nutritionist Examiners.
- (4)
- | Fee Schedule                  | Amount   |
|-------------------------------|----------|
| (a) Application               | \$ 75.00 |
| (b) Endorsement/Verification  | \$ 20.00 |
| (c) Late Renewal              | \$100.00 |
| (d) License - Initial         | \$110.00 |
| (e) Reinstatement             | \$ 90.00 |
| (f) Renewal - Biennial        | \$ 90.00 |
| (g) Replacement License       | \$ 25.00 |
| (h) State Regulatory-Biennial | \$ 10.00 |
| (i) Temporary Permit          | \$ 5.00  |
- (5) All fees except the initial license fee will be nonrefundable. The initial license will be refunded if the license fee has been paid at the time of application and the individual’s application is denied.

**Authority:** T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-1-118, 63-25-107, 63-25-109, 63-25-111, 63-25-112, and 63-25-113. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996. Amendment filed September 17, 1998; effective December 1, 1998. Amendment filed September 9, 1999; effective November 22, 1999.

#### **0470-1-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.**

- (1) An application packet shall be requested from the board’s administrative office.

(Rule 0470-1-.07, continued)

- (2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will be ordinarily processed at the next board meeting scheduled for the purpose of reviewing files.
- (3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the board's administrator, provided that final approval of all applications is made and ratified by the board.
- (4) If an application is incomplete when received in the board's administrative office, a deficiency letter will be sent to the applicant notifying him of the deficiency. All supporting documentation must be received in the board office within 60 days of receipt of notification of a deficiency or the application shall be deemed abandoned pursuant to Rule 0470-1-.07(8).
- (5) If a completed application has been denied and ratified as such by the board, the action shall become final and the following shall occur:
  - (a) A notification of the denial shall be sent by the board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure, and such notification shall contain all the specific statutory or rule authorities for the denial.
  - (b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.
  - (c) An applicant has a right to a contested case hearing if the licensure denial was based on subjective or discretionary criteria.
  - (d) An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria. If after review and attempted resolution by the board's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal. Such request must be made in writing to the board within 30 days of the receipt of the notice of denial from the board.
- (6) The board may at its discretion delay a decision on licensure for any applicant for whom the board wishes additional information for the purpose of clarifying information previously submitted. This request is to be in writing and requested information shall be submitted within 60 days of the date of receipt of a request for additional information.
- (7) If the board finds it has erred in the issuance of a license, the board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days from date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0470-1-.07(5).
- (8) Abandonment of Application
  - (a) An application shall be deemed abandoned and closed if the application has not been completed by the applicant within 60 days after receipt of notification of a deficiency or request for additional information.

(Rule 0470-1-.07, continued)

- (b) The determination of abandonment must be ratified by the Board. Written notification will be mailed to the applicant notifying him that the file has been closed.
- (c) An individual who abandons an application must file a new application with the Board.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 4-5-301, and 63-25-107. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.08 EXAMINATIONS.** In addition to having filed an application, individuals seeking licensure shall be required to pass an examination.

- (1) The board adopts as its written section of the licensure examination for dietitian/nutritionists the Commission on Dietetic Registration of the American Dietetic Association published examination or its successor examination(s).
- (2) Prior to submitting an application to the board for consideration for licensure, the applicant must have taken and passed the adopted examination.
  - (a) Admission to, application for, and the fees required to sit for the examination are governed by and must be submitted directly to the testing agency.
  - (b) The applicant may receive additional information concerning the examination by writing to: American Dietetic Association, 216 West Jackson Boulevard, Chicago, IL 60606
- (3) Passing scores on the American Dietetic Association examination are determined by the testing agency. Successful completion of the examination as certified to the board is adopted by the board as constituting successful completion of the written section of the examination.
- (4) Evidence of passing the examination must be submitted to the board in conjunction with the applicant's filing an application for licensure with this board. Proof of successful completion shall be either a notarized copy of a current, valid card issued by the Commission or original certification submitted directly to the board from the Commission.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, and 63-25-108. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.09 RENEWAL OF LICENSE.**

- (1) Renewal Application
  - (a) The due date for certificate and license renewal is the last day of the month in which a licensee's birthdate falls pursuant to the Division of Health Related Board's biennial birthdate renewal system as contained as the expiration date on renewal certificates.
  - (b) Methods of Renewal
    - 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

[www.tennesseeanytime.org](http://www.tennesseeanytime.org)

(Rule 0470-1-.09, continued)

2. Paper Renewals - For licensees who have not renewed their license or certificate online via the Internet, a renewal application form will be mailed to each licensee to the last address provided to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.
- (c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal an individual must submit to the Division of Health Related Boards on or before the expiration date the following:
  1. A completed renewal application form.
  2. The renewal and State regulatory fees as provided in rule 0470-1-.06.
- (d) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired License
  - (a) Licenses that have expired may be reinstated upon meeting the following conditions:
    1. Payment of all past due renewal fees; and
    2. Payment of the late renewal fee provided in rule 0470-1-.06.
  - (b) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any board member or the board's designee.
  - (c) Anyone submitting a renewal form or letter which is found to be untrue may be subjected to disciplinary action as provided in rule 0470-1-.15.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-25-107, 63-25-109, 63-25-110, 63-25-111, 63-25-112, and 63-25-113. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996. Amendment filed April 16, 2001; effective June 30, 2001. Amendment filed September 5, 2002; effective November 19, 2002.

#### **0470-1-.10 SUPERVISION.**

- (1) Prior to applying for licensure, the individual must have completed a planned continuous pre-professional experience in nutrition practice of not less than 900 hours under the supervision of an RD or successfully completed a program of supervised clinical experience approved by the Commission.
- (2) Supervision provided by the applicant's parents, spouse, former spouse, siblings, children, cousins, in-laws (present or former), aunts, uncles, grandparents, grandchildren, step-children, employees, or anyone sharing the same household, shall not be acceptable toward fulfilling licensure requirements. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payment for actual supervisory hours.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, and 63-25-108. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

#### **0470-1-.11 RETIREMENT AND REACTIVATION OF LICENSE.**

(Rule 0470-1-.11, continued)

- (1) A person who holds a current license and does not intend to practice as a “licensed dietitian/nutritionist” may apply to convert an active license to retired status. An individual who holds a retired license will not be required to pay the renewal fee.
- (2) A person who holds an active license may apply for retired status in the following manner:
  - (a) Obtain form, complete, and submit to the board’s administrative office an affidavit of retirement form.
  - (b) Submit any documentation which may be required to the board’s administrative office.
- (3) Licensure holders whose license has been retired may reenter active status by doing the following:
  - (a) Submit a written request for licensure reactivation to the board’s administrative office.
  - (b) Pay the licensure renewal fees and State regulatory fees as provided in rule 0470-1-.06. If retirement reactivation is requested prior to the expiration of one year from the date of retirement, the board will require payment of the late renewal fee and past due licensure renewal fees.
- (4) Licensure reactivation applications shall be treated as licensure applications and review and decisions shall be governed by rule 0470-1-.07.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, 63-25-111, 63-24-412, and 63-25-113. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.12 RESERVED.**

**0470-1-.13 PROFESSIONAL ETHICS.**

- (1) Professional representation and responsibilities.
  - (a) A licensee shall not misrepresent professional qualifications or credentials.
  - (b) A licensee shall not make any false or misleading claims about the efficacy of any dietetic services.
  - (c) A licensee shall not permit the use of his name for the purpose of certifying that dietetic services have been rendered unless that licensee has provided or supervised the provision of those services.
  - (d) A licensee shall not promote or endorse products in a manner that is false or misleading.
  - (e) The licensee must present adequate information and unbiased interpretations of controversial information to clients.
  - (f) A licensee shall maintain knowledge and skills required for professional competence.
  - (g) A licensee shall not be addicted to or dependent upon alcohol or other habit-forming drugs or be a habitual user of narcotics, barbiturates, amphetamines, hallucinogenics, or other drugs having similar effects upon the competency of the licensee.

(Rule 0470-1-.15, continued)

- (h) A licensee shall have the responsibility of reporting alleged violations of board law or rules to the Investigations section of Health Related Boards.
- (i) The licensee conducts himself with honesty, integrity, and fairness in all aspects of professional life.
- (j) The licensee remains free of conflict of interests and promotes or endorses products in a manner that is neither false nor misleading.
- (k) The licensee assumes responsibilities and accountability for personal competence in practice and recognition of limits of his ability and adherence to accepted standards of practice.
- (l) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or in competitive bidding.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, and 63-25-110. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.14 RESERVED.**

**0470-1-.15 DISCIPLINARY ACTIONS, CIVIL PENALTIES, INFORMAL SETTLEMENTS, ASSESSMENT OF COSTS, AND SUBPOENAS.**

- (1) Upon a finding by the Board that a Dietitian/Nutritionist has violated any provision of the T.C.A. § 63-25-101, et seq., or the rules promulgated thereto, the Board may impose any of the following actions separately or in any combination deemed appropriate to the offense.
  - (a) Advisory Censure - This is a written action issued to the dietitian/nutritionist for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
  - (b) Formal Censure or Reprimand - This is a written action issued to a dietitian/nutritionist for one time and less severe violations. It is a formal disciplinary action.
  - (c) Probation - This is a formal disciplinary action which places a dietitian/nutritionist on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
  - (d) Licensure Suspension - This is a formal disciplinary action which suspends an individual's right to practice for a fixed period of time. It contemplates the reentry of the individual into the practice under the licensure previously issued.
  - (e) Revocation for cause. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the certification or licensure previously issued. The Board, in its discretion, may allow reinstatement of a revoked certificate or license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for certification or licensure from a person whose license was revoked shall be considered prior to the expiration of at least one year unless otherwise stated in the Board's revocation order.

(Rule 0470-1-.15, continued)

- (f) Conditions - These include any action deemed appropriate by the board to be required of an individual disciplined during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked certificate or license.
- (g) Civil Penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (2) of this Rule.

(2) Civil Penalties

- (a) Purpose. The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. §63-1-134.
- (b) Schedule of Civil Penalties
  - 1. A Type A civil penalty may be imposed whenever the board finds the person who is required to be licensed or certified by the Board is guilty of a willful and knowing violation of the Dietetics and Nutrition Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is, or is likely to be an imminent substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, a Type A penalty shall include, but not be limited to, a person who willfully and knowingly is or was practicing as a dietitian/nutritionist without a permit, license, certificate or other authorization from the board.
  - 2. A Type B civil penalty may be imposed whenever the board finds the person required to be certified or licensed by the board is guilty of a violation of the Dietetics and Nutrition Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of clients or the public.
  - 3. A Type C civil penalty may be imposed whenever the board finds the person required to be certified or licensed by the board is guilty of a violation of the Dietetics and Nutrition Practice Act or regulations promulgated pursuant thereto, which are neither directly detrimental to clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.
- (c) Amount of Civil Penalties
  - 1. Type A civil penalties shall be assessed in the amount of not less than \$500 nor more than \$ 1,000.
  - 2. Type B civil penalties may be assessed in the amount of not less than \$100 and not more than \$500.
  - 3. Type C civil penalties may be assessed in the amount of not less than \$50 and not more than \$ 100.
- (d) Procedures for Assessing Civil Penalties
  - 1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty, and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

(Rule 0470-1-.15, continued)

2. Civil Penalties may also be initiated and assessed by the board during consideration of any Notice of Charges. In addition, the board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the division.
  3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
    - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
    - (ii) The circumstances leading to the violation;
    - (iii) The severity of the violation and the risk of harm to the public; and,
    - (iv) The economic benefits gained by the violator as a result of non-compliance; and,
    - (v) The interest of the public.
  4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, T.C.A.
- (3) Informal Settlements - The board consultant is authorized to enter into informal settlement agreements pursuant to rule 0470-1-.19 (7) under which a complaint against an individual may be closed without any disciplinary action. Such agreement may include any terms deemed appropriate by the board consultant including, but not limited to:
- (a) Mandatory education program in course attendance.
  - (b) Submission of reports, records or other appropriate documentation.
  - (c) Conditioning of the individual's activities in any manner which affect his practice in Tennessee.
- (4) Assessment of Costs - The imposition of a requirement that any person against whom sanctions have been imposed as a result of a disciplinary action pay the actual and reasonable costs of the prosecution of the case. When the Board, in any final order, requires the "payment of costs", that requirement includes payment of the following:
- (a) All costs attributed to and assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of the matter including all investigator time, travel and lodging incurred during the prosecution.
  - (b) All costs assessed against the Board by the Division for the use of the division facilities and personnel for prosecution of the matter.
  - (c) All costs assessed against the Board for the appearance fees, transcripts, time, travel and lodging of administrative law judges and court reporters and witnesses required in the prosecution of the matter.
- (5) Subpoenas

(Rule 0470-1-.15, continued)

- (a) Purpose - Although this rule applies to persons and entities other than dietitians, it is the Board's intent as to dietitians that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or board investigators to seek other incriminating evidence against dietitians when the division or board does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.

- (b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

- 1. Probable Cause

- (i) For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Dietetics/Nutrition Practice Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
  - (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

- 2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the board, or any duly appointed or elected chairperson of any panel of the board.

- (c) Procedures

- 1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.
  - (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:
    - (I) The time frame in which issuance is required so the matter can be timely scheduled; and
    - (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in

(Rule 0470-1-.15, continued)

the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the division or board. In no event shall such subpoena be broadly drafted to provide investigative access to medical records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or board consideration of a dietitian's conduct, act, or omission.

- (III) Whether the proceedings for the issuance are to be conducted by physical appearance or electronic means; and
  - (IV) The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed.
- (iii) The Board's Unit Director shall cause to have the following done:
- (I) In as timely a manner as possible arrange for either an elected officer of the board, or any duly appointed or elected chairperson of any panel of the board, to preside and determine if issuing the subpoena should be recommended to the full Board; and
  - (II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and
  - (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
    - I. Preserve a verbatim record of the proceeding; and
    - II. Prevent the person presiding over the proceedings and/or signing the subpoena from being allowed to participate in any manner in any disciplinary action of any kind, formal or informal, which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
- (I) The applicant shall do the following:
    - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
    - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
    - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
      - A. The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed; and

(Rule 0470-1-.15, continued)

- B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and
  - C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and
  - D. The date, time and place for compliance with the subpoena.
- IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

(II) The Presiding Officer shall do the following:

- I. Have been selected only after assuring the Board's Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and
- II. Commence the proceedings and swear all necessary witnesses; and
- III. Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings; and present to the full board only that evidence necessary for an informed decision; and
- IV. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
- V. Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full board; and
- VI. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for consideration of issuance of subpoenas in the matter.

(III) The Board shall do the following:

- I. By a vote of two thirds (2/3) of the board members issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
- II. Sign the subpoena as ordered to be issued, quashed or modified.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding,

(Rule 0470-1-.15, continued)

this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoenas shall be issued on forms approved by the Board.
2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

(e) Subpoena Service - The service of a subpoena issued by the Board shall be made by the sheriff of the county of residence of the licensee or person upon who the subpoena is served.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 4-5-311, 63-25-104, 63-25-107, and 63-25-110. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed September 5, 2002; effective November 19, 2002.

**0470-1-.16 REPLACEMENT LICENSE.**

A licensee whose "artistically designed" license has been lost or destroyed may be issued a replacement document upon receipt of a written request in the board administrative office. Such request shall be accompanied by an affidavit (signed and notarized) stating the facts concerning the loss or destruction of the original document and the required fee pursuant to rule 0470-1-.06.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-106, and 63-25-107. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.17 CHANGE OF ADDRESS AND/OR NAME.**

- (1) Change of Address. Each person holding a license who has had a change of address shall file in writing with the board his current mailing address, giving both old and new addresses. Such requests should be received in the board's administrative office no later than 30 days after such change has occurred and must reference the individual's name, profession, and license number.
- (2) Change of Name. Any individual registered with the board shall notify the board in writing within 30 days of a name change. The notice shall provide the old name and the new name and must reference the individual's profession, board, social security number and license number.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-106, 63-1-108, and 63-25-107. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.18 MANDATORY RELEASE OF CLIENT RECORDS.**

- (1) Upon request from a client or the client's authorized representative, an individual registered with this board shall provide a complete copy of the client's records or summary of such records which were maintained by the provider.
- (2) It shall be the provider's option as to whether copies of the records or a summary will be given to the client.
- (3) Requests for records shall be honored by the provider in a timely manner.

(Rule 0470-1-.16, continued)

- (4) The individual requesting the records shall be responsible for payment of the reasonable costs to the provider of copying and mailing of the records.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-25-107. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996.

**0470-1-.19 BOARD MEETINGS, OFFICERS, CONSULTANTS, RECORDS, AND DECLARATORY ORDERS.**

- (1) Board Meetings.
  - (a) The time, place, and frequency of board meetings shall be at the discretion of the board except at least one meeting shall be held annually.
  - (b) Special meetings are called at the discretion of the board chair or at the request of two members of the board.
  - (c) Three members of the board shall at all times constitute a quorum.
  - (d) All meetings of the board shall be open to the public.
- (2) The board shall elect from its members the following officers:
  - (a) Chairperson - who shall preside at all board meetings.
  - (b) Secretary - who along with the board administrator shall be responsible for correspondence from the board.
- (3) Board Conflict of Interests - Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact in writing, and shall not vote upon such matter.
- (4) The board has the authority to select a board consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
  - (a) Recommend whether and what type disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.
  - (b) Recommend whether and what terms a complaint, case or disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently ratified by the full board before it will become effective.
  - (c) Undertake any other matter authorized by a majority vote.
- (5) Records and Complaints
  - (a) All requests, applications, notices, other communications and correspondence shall be directed to the board's administrative office. Any requests or inquiries requiring a board decision or official board action, except documents relating to disciplinary actions or hearing requests, must be received at least 14 days prior to a scheduled board meeting and will be retained in the board's administrative office and presented to the board at the board meeting. Such documentation not timely received shall be set over to the next board meeting.

(Rule 0470-1-.19, continued)

- (b) All records of the board, except those made confidential by law, are open for inspection and examination, under the supervision of an employee of the Division at the board's administrative office.
  - (c) Copies of public records shall be provided to any person upon payment of the cost of copying.
  - (d) Complaints made against a licensee become public information only upon the filing of a notice of charges by the Department of Health.
  - (e) All complaints should be directed to the Investigations Section of Health Related Boards.
- (6) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 4-5-223, 4-5-224, 63-1-117, 63-25-106, 63-25-107, 63-25-108, 63-25-109, and 63-25-110. **Administrative History:** Original rule filed December 18, 1995; effective March 1, 1996. Amendment filed September 9, 1999; effective November 22, 1999.

#### **0470-1-.20 CONSUMER RIGHT-TO-KNOW REQUIREMENTS**

- (1) Malpractice Reporting Requirements - The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal Conviction Reporting Requirements - For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:
  - (a) Conviction of any felony; and
  - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
    - 1. Sex.
    - 2. Alcohol or drugs.
    - 3. Physical injury or threat of injury to any person.
    - 4. Abuse or neglect of any minor, spouse or the elderly.
    - 5. Fraud or theft.
  - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-25-107, and Public Chapter 1073 of the Public Acts of 1998, Section 5, Subsection (5). **Administrative History:** Original rule filed September 9, 1999; effective November 22, 1999.